

when acquired as investment rental property, are not likely to violate the antitrust laws. Acquisitions of these types of real property are often made solely for rental investment purposes. In such instances, investors in such property play no active role in the business conducted on these properties and seek only to profit from their investment in the real estate. Moreover, in order to reduce risk of loss in the value of the real estate they hold, purchasers of numerous properties generally do not concentrate their investments in a single geographic market. Given the size and unconcentrated nature of the real estate market, such acquisitions are not likely to pose a competitive concern. The limitations in new § 802.5 on the intent of the acquiring person and the use of the qualifying real property are designed to insure that the exemption will not be available for any acquisition intended to achieve business objectives that are not related to the rental or investment objectives.

Although the investment rental property exemption may apply to real property, such as office or residential property, hotels/motels and rental retail space, that is also exempt under § 802.2, there will be no need to apply new § 802.5 to the acquisition of these categories of real property assets. The important distinction between § 802.2 and § 802.5 is that § 802.2 exempts acquisitions of specific classes of real property assets and does not incorporate the intent-based test of § 802.5, while § 802.5 exempts any type of real property assets that meet the rule's requirements for investment rental property. In addition, the exemptions for acquisition of real property under § 802.2 apply even if the acquiring person occupies the property for any purpose while § 802.5 permits the acquiring person to use the acquired investment rental property assets only to manage or operate the real property assets being acquired.

Proposed § 802.5 limited the availability of the exemption for acquisitions of investment rental property to institutional investors as defined by § 802.64 and persons whose sole business is the acquisition or management of investment rental property assets. Comment 2 recommended that the limitation on qualified purchasers be eliminated because the definition of investment rental property assets in proposed § 802.5(b) would be sufficient to prevent purchasers from conducting business on the property being acquired. Comment 31 suggested that the exemption should be available to persons other than

investors whose sole business consists of acquiring or managing investment rental property assets. REITs, the commenter pointed out, are permitted to own certain assets such as temporary stock and bond investments that are not investment rental property and thus, under the proposed rules, may not qualify as entities whose sole business is acquiring and managing investment rental property assets.

The Commission has determined that the dual restrictions in proposed § 802.5 which made the exemption available only to (1) certain types of investors for (2) acquisitions of investment rental property were too limiting. The Commission believes that eliminating the first restriction will not compromise the efficacy of the exemption. Thus, new § 802.5 is available to all types of purchasers so long as the acquisition qualifies as investment rental property assets.

New § 802.5 includes a provision, found in other sections of Part 802 and omitted from proposed § 802.5, stating that in an acquisition that includes investment rental property, the transfer of any other property shall be separately subject to the requirements of the act. Thus an investor can purchase property, the acquisition of which is exempt under § 802.5, and non-exempt assets valued at \$15 million or less and still qualify for the exemption.

In addition, the provision included in proposed § 802.5 exempting acquisitions of voting securities of an entity holding assets that consist solely of investment rental property assets has been modified and moved to new § 802.4. Thus, the exemption for acquisitions of voting securities of issuers holding § 802.5 assets will be governed by § 802.4. This change results in greater comparability between the direct acquisition of § 802.5 assets and the acquisition of voting securities of issuers holding these assets.

Proposed § 802.5 included within the definition of investment rental property assets any space occupied by the acquiring person for the sole purpose of maintaining, managing or supervising the operation of real property and real property rented only to entities not included within the acquired person. The proposal incorrectly implied that an investor could not lease a portion of the acquired rental property to a subsidiary or other affiliated entity which would, in turn, manage the property on behalf of the investor. The language in new § 802.5 has been changed and explicitly permits the investor to establish this arrangement with a subsidiary solely to maintain, manage or supervise the purchased property.

For some acquisitions, in order to determine prior to the acquisition whether the buyer will use the investment rental property in accordance with the requirements of § 802.5, it may be necessary to examine the acquisition intent of the acquiring person, particularly if that investor is controlled by a person that also controls entities engaged in other businesses. The acquisition intent can be inferred from the context of the transaction and from actions by the acquiring person before the acquisition. Circumstances or conduct such as the following may be scrutinized separately or in combination to determine whether the acquiring person has an intent that is fully consistent with holding property solely as investment rental property assets: (1) the acquiring person undertook, prior to the acquisition, a study of the cost of converting the property for use by one of its businesses; (2) the property is to be converted for use by the acquiring person; (3) prior to the acquisition, the property is being leased to or used by entities included within the acquiring person; (4) a portion of the acquired property is being leased at the time of the acquisition to a competitor of the acquiring person; and (5) the purchase price reflects the value of a business operated on the property rather than the investment rental value of the property.

Because § 802.5 covers a broad range of non-specific assets and places no limits on who may acquire the assets, the Commission has declined to adopt the suggestion in Comment 7 to eliminate the requirement that the property to be acquired will be rented only to entities not included within the acquiring person. The Commission also declined to adopt the suggestions in Comments 7 and 9 to eliminate the restrictions on the acquiring person's use of any space on the property for the sole purpose of maintaining, managing and supervising the operation of the property. Limits on the use of the property provide additional safeguards to insure that the property is being acquired for investment or rental purposes, since other safeguards such as limits on the type of investment rental property that can be acquired and the type of investor that qualifies for exemption are absent from new § 802.5.

Currently, HSR notifications are not required for acquisitions of realty made by REITs under the ordinary course of business exemption. REITs acquire real estate in the ordinary course of their business, and the fiduciary nature of their investment activities and the restrictions imposed upon them by the Internal Revenue Code safeguard against improper use of property they acquire.

New § 802.5 is not intended to narrow the exemption from the reporting requirements that is currently available to REITs.

Comment 9 noted that the language of proposed § 802.5 excluded the acquisition of a REIT by a non-REIT, because of the restriction on the type of investor that qualified for the exemption. Acquisitions of REITs by non-REITs are currently subject to the notification requirements, because the fiduciary restraints that govern acquisitions by REITs do not generally apply to non-REITs. However, under new § 802.5, the acquisition by a non-REIT of all of the assets of a REIT may be exempt from the reporting requirements if the transaction meets the requirements of the exemption. The acquisition of all of the assets of a REIT by another REIT is currently an exempt transaction, even though the acquired REIT may hold certain non-real estate assets, and new § 802.5 does not supersede this exemption.

VI. Aggregation Rules

Section 801.15 states that, notwithstanding § 801.13, certain assets and voting securities acquired in exempt transactions are not considered to be "held as a result of an acquisition." These rules and concepts govern whether certain acquisitions must be aggregated to determine if a proposed acquisition requires notification. As the Statement of Basis and Purpose makes clear (43 FR 33479), § 801.15 is applicable to simultaneous acquisitions in which both exempt and non-exempt assets or voting securities are being acquired from the same acquired person and to acquisitions of non-exempt assets or voting securities after the person has previously acquired exempt assets or voting securities from the same acquired person.

Section 801.15(a) provides that assets and voting securities exempt at the time of acquisition under certain provisions of the act and rules are not held as a result of the acquisition. Acquisitions exempted by section 7A(c)(1) of the act are among the classes listed. As a result, in determining whether an assets acquisition meets the more than \$15 million size-of-transaction criterion of section 7A(a)(3), the value of assets acquired in the ordinary course of business is not counted. Because § 802.1 declares that certain acquisitions are and that others are not considered to be transfers in the ordinary course of business under section 7A(c)(1), it is not necessary to list § 802.1 separately in § 801.15(a). However, to eliminate possible confusion, § 802.1 is listed in § 801.15(a), along with section 7A(c)(1),

to make clear that assets exempted pursuant to § 802.1(b), (c) and (d) are not deemed to be held as the result of an acquisition for aggregation purposes. Therefore, an acquisition of current supplies valued at \$8 million is not aggregated with subsequent acquisitions from the same person to determine if a proposed acquisition will exceed the \$15 million size-of-transaction notification threshold, since the current supplies are exempt pursuant to section 7A(c)(1) and § 802.1(c).

New § 802.2, which provides an exemption for the acquisition of certain types of real property assets (new facilities, used facilities, unproductive real property, office and residential property, hotels and motels, recreational land, agricultural property, rental retail space and warehouses) is also listed in § 801.15(a) since the exemption sets no dollar limit on the amount of exempt assets that may be acquired without prior notification. Since new § 802.2 is listed in § 801.15(a), assets exempt under this provision are never held as a result of an acquisition. Section 802.5, which exempts acquisitions of investment rental property also appears in § 801.15(a). However, it is important to note that new §§ 802.2 and 802.5 provide that the acquisition of any other assets not exempted by new §§ 802.2 and 802.5 are subject to the requirements of the act and the rules as if they were being acquired in a separate acquisition. Consequently, in an acquisition that includes these exempt assets, the acquisition of other non-exempt assets are subject to the aggregation requirements of § 801.13(b).

Sections 802.3 (exempting certain acquisitions of carbon-based mineral reserves) and 802.4 (exempting acquisitions of voting securities of issuers holding exempt assets under section 7A(c)(2) of the act, §§ 802.2, 802.3 and 802.5, plus non-exempt assets valued at \$15 million or less), appear in § 801.15(b). This provision requires parties to aggregate the value of otherwise exempt assets that are transferred in separate acquisitions. Section 801.15(b) provides that the aggregation rules of § 801.13 are to be applied if, as a result of a proposed subsequent transaction, the assets from that transaction and an earlier transaction will exceed a quantitative limitation on the exemption of assets of that kind. Thus, the \$500 million limitation for oil and gas reserves and the \$200 million limitation for coal reserves in § 802.3, that were not reached in an earlier acquisition, may be exceeded by a subsequent acquisition of reserves.

Example 4 to § 801.15 amends the current Example 4, in which the acquiring person is purchasing two mines. The existing example does not indicate whether the mines contain carbon-based minerals. Based on the value of the mines stated in the example, § 802.3 would exempt their acquisition if they are carbon-based mineral reserves. To avoid possible confusion, the acquired assets have been changed to manufacturing plants.

In response to a suggestion in Comment 9, language has been added to Example 5 regarding valuation of assets in sequential acquisitions to determine if the limitation in § 802.3 has been exceeded. In such acquisitions, the buyer is not required to determine the current fair market value of the assets of the first acquisition, but he may use the value of those assets at the time of their prior acquisition pursuant to § 801.10(b). However, in applying § 802.4, if in the first acquisition the buyer had purchased a minority share of the voting securities of an issuer that held the exempt oil reserves assets and proposed to buy additional voting securities from the same issuer, the buyer is required to revalue the total holdings of the issuer at the time of the second acquisition to determine if the issuer's holdings of oil and gas rights and reserves exceed the limitation in § 802.3.

In proposed § 801.15, only § 802.4(b) appeared in § 801.15(b) because only that provision of § 802.4 exempted acquisitions of voting securities of issuers holding assets that, if acquired directly, were exempt subject to certain dollar limitations. Paragraphs (a) and (b) of proposed § 802.4 have now been consolidated into new § 802.4(a) since the exemption has been expanded to exempt issuers holding exempt assets and non-exempt valued at \$15 million or less. New § 802.4 now appears in amended § 801.15(b) to reflect the provision contained in § 802.4(a) limiting the value of the non-exempt assets that the issuer whose voting securities are being acquired can hold. Also, three new examples have been added to § 801.15 to illustrate the aggregation principles of § 802.4 (see discussion of new § 802.4, above).

List of Subjects in 16 CFR Parts 801 and 802

Antitrust.

Amended Rules

The Commission amends Title 16, Chapter 1, Subpart H, of the Code of Federal Regulations as follows:

PART 801—COVERAGE RULES

1. The authority citation for Part 801 continues to read as follows:

Authority: Sec. 7A(d), Clayton Act, 15 U.S.C. 18a(d), as added by sec. 201, Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94-435, 90 Stat. 1390.

2. Section 801.15(a)(2) and (b) are revised to read as follows:

§ 801.15 Aggregation of voting securities and assets the acquisition of which was exempt.

(a) * * *

(2) Sections 802.1, 802.2, 802.5, 802.6(b)(1), 802.8, 802.31, 802.35, 802.50(a)(1), 802.51(a), 802.52, 802.53, 802.63, and 802.70;

(b) Assets or voting securities the acquisition of which was exempt at the time of acquisition (or would have been exempt, had the act and these rules been in effect), or the present acquisition of which is exempt, under section 7A(c)(9) and §§ 802.3, 802.4, 802.50(a)(2), 802.50(b), 802.51(b) and 802.64 unless the limitations contained in section 7A(c)(9) or those sections do not apply or as a result of the acquisition would be exceeded, in which case the assets or voting securities so acquired will be held; and

3. Section 801.15, Example 4 is revised, and Examples 5, 6, 7 and 8 are added to read as follows:

§ 801.15 Aggregation of voting securities and assets the acquisition of which was exempt.

Examples: * * *

4. Assume that acquiring person "B," a United States person, acquired from corporation "X" two manufacturing plants located abroad, and assume that the acquisition price was \$40 million. In the most recent year, sales into the United States attributable to the plants were \$15 million, and thus the acquisition was exempt under § 802.50(a)(2). Within 180 days of that acquisition, "B" seeks to acquire a third plant from "X," to which United States sales of \$12 million were attributable in the most recent year. Since under § 801.13(b)(2), as a result of the acquisition, "B" would hold all three plants of "X," and the \$25 million limitation in § 802.50(a)(2) would be exceeded, under paragraph (b) of this rule, "B" would hold the previously acquired assets for purposes of the second acquisition. Therefore, as a result of the second acquisition, "B" would hold assets of X exceeding \$15 million in value, would not qualify for the exemption in § 802.50(a)(2), and must observe the requirements of the act and file notification for the acquisition of all three plants before acquiring the third plant.

5. "A" acquires producing oil reserves valued at \$400 million from "B." Two

months later, "A" agrees to acquire oil and gas rights valued at \$75 million from "B." Paragraph (b) of this section and § 801.13(b)(2) require aggregating the previously exempt acquisition of oil reserves with the second acquisition. If the two acquisitions, when aggregated, exceed the \$500 million limitation on the exemption for oil and gas reserves in § 802.3(a), "A" and "B" will be required to file notification for the latter acquisition, including within the filings the earlier acquisition. Since, in this example, the total value of the assets in the two acquisitions, when aggregated, is less than \$500 million, both acquisitions are exempt from the notification requirements. In determining whether the value of the assets in the two acquisitions exceed \$500 million, "A" need not determine the current fair market value of the oil reserves acquired in the first transaction, since these assets are now within the person of "A." Instead "A" may use the value of the oil reserves at the time of their prior acquisition in accordance with § 801.10(b).

6. "X" acquired 55 percent of the voting securities of M, an entity controlled by "Z," six months ago and now proposes to acquire 50 percent of the voting stock of N, another entity controlled by "Z." M's assets consist of \$150 million worth of producing coal reserves plus \$7 million worth of non-exempt assets and N's assets consist of a producing coal mine worth \$100 million together with non-exempt assets with a fair market value of \$6 million. "X's" acquisition of the voting securities of M was exempt under § 802.4(a) because M held exempt assets pursuant to § 802.3(b) and less than \$15 million of non-exempt assets. Because "X" acquired control of M in the earlier transaction, M is now within the person of "X," and the assets of M need not be aggregated with those of N to determine if the subsequent acquisition of N will exceed the limitation for coal reserves or for non-exempt assets. Since the assets of N alone do not exceed these limitations, "X's" acquisition of N also is not reportable.

7. In Example 6, above, assume that "X" acquired 30 percent of the voting securities of M and proposes to acquire 40 percent of the voting securities of N, another entity controlled by "Z." Assume also that M's assets at the time of "X's" acquisition of M's voting securities consisted of \$90 million worth of producing coal reserves and non-exempt assets with a fair market value of \$9 million, and that N's assets currently consist of \$60 million worth of producing coal reserves and non-exempt assets with a fair market value of \$8 million. Since "X" acquired a minority interest in M and intends to acquire a minority interest in N, and since M and N are controlled by "Z," the assets of M and N must be aggregated, pursuant to § 801.15(b) and § 801.13, to determine whether the acquisition of N's voting securities is exempt. "X" is required to determine the current fair market value of M's assets. If the fair market value of M's coal reserves is unchanged, the aggregated exempt assets do not exceed the limitation for coal reserves. However, if the present fair market value of N's non-exempt assets also is unchanged, the present fair market value of the non-exempt assets of M and N when

aggregated is greater than \$15 million. Thus the acquisition of the voting securities of N is not exempt. If "X" proposed to acquire 50 percent or more of the voting securities of both M and N in the same acquisition, the assets of M and N must be aggregated to determine if the acquisition of the voting securities of both issuers is exempt. Since the fair market value of the aggregated non-exempt assets exceeds \$15 million, the acquisition would not be exempt.

8. "A" acquired 49 percent of the voting securities of M and 45 percent of the voting securities of N. Both M and N are controlled by "B." At the time of the acquisition M held rights to producing coal reserves worth \$90 million and N held a producing coal mine worth \$90 million. This acquisition was exempt since the aggregated holdings fell below the \$200 million limitation for coal in § 802.3(b). A year later, "A" proposes to acquire an additional 10 percent of the voting securities of both M and N. In the intervening year, M has acquired coal reserves so that its holdings are now valued at \$140 million, and the value of N's assets remained unchanged. "A's" second acquisition would not be exempt. "A" is required to determine the value of the exempt assets and any non-exempt assets held by any issuer whose voting securities it intends to acquire before each proposed acquisition (unless "A" already owns 50 percent or more of the voting securities of the issuer) to determine if the value of those holdings of the issuer falls below the limitation of the applicable exemption. Here, an assessment shows that the holdings of M and N now exceed the \$200 million limitation for coal reserves in § 802.3.

PART 802—EXEMPTION RULES

1. The authority citation for Part 802 continues to read as follows:

Authority: Sec. 7A(d), Clayton Act, 15 U.S.C. 18a(d), as added by sec. 201, Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94-435, 90 Stat. 1390.

2. Section 802.1 is revised to read as follows:

§ 802.1 Acquisitions of goods and realty in the ordinary course of business.

Pursuant to section 7A(c)(1), acquisitions of goods and realty transferred in the ordinary course of business are exempt from the notification requirements of the act. This section identifies certain acquisitions of goods that are exempt as transfers in the ordinary course of business. This section also identifies certain acquisitions of goods and realty that are not in the ordinary course of business and, therefore, do not qualify for the exemption.

(a) *Operating unit.* An acquisition of all or substantially all the assets of an operating unit is not an acquisition in the ordinary course of business. "Operating unit" means assets that are operated by the acquired person as a

business undertaking in a particular location or for particular products or services, even though those assets may not be organized as a separate legal entity.

(b) *New goods.* An acquisition of new goods is in the ordinary course of business, except when the goods are acquired as part of an acquisition described in paragraph (a) of this section.

(c) *Current supplies.* An acquisition of current supplies is in the ordinary course of business, except when acquired as part of an acquisition described in paragraph (a) of this section. The term "current supplies" includes the following kinds of new or used assets:

(1) Goods acquired and held solely for the purpose of resale or leasing to an entity not within the acquiring person (e.g., inventory).

(2) Goods acquired for consumption in the acquiring person's business (e.g., office supplies, maintenance supplies or electricity), and

(3) Goods acquired to be incorporated in the final product (e.g., raw materials and components).

(d) *Used durable goods.* A good is "durable" if it is designed to be used repeatedly and has a useful life greater than one year. An acquisition of used durable goods is an acquisition in the ordinary course of business if the goods are not acquired as part of an acquisition described in paragraph (a) of this section and any of the following criteria are met:

(1) The goods are acquired and held solely for the purpose of resale or leasing to an entity not within the acquiring person; or

(2) The goods are acquired from an acquired person who acquired and has held the goods solely for resale or leasing to an entity not within the acquired person; or

(3) The acquired person has replaced, by acquisition or lease, all or substantially all of the productive capacity of the goods being sold within six months of that sale, or the acquired person has in good faith executed a contract to replace within six months after the sale, by acquisition or lease, all or substantially all of the productive capacity of the goods being sold; or

(4) The goods have been used by the acquired person solely to provide management and administrative support services for its business operations, and the acquired person has in good faith executed a contract to obtain substantially similar services as were provided by the goods being sold. Management and administrative support services include services such as

accounting, legal, purchasing, payroll, billing and repair and maintenance of the acquired person's own equipment. Manufacturing, research and development, testing and distribution (i.e., warehousing and transportation) are not considered management and administrative support services.

Examples: 1. Greengrocer Inc. intends to sell to "A" all of the assets of one of the 12 grocery stores that it owns and operates throughout the metropolitan area of City X. Each of Greengrocer's stores constitutes an operating unit, i.e., a business undertaking in a particular location. Thus "A's" acquisition is not exempt as an acquisition in the ordinary course of business. However, the acquisition will not be subject to the notification requirements if the acquisition price or fair market value of the store's assets does not exceed \$15 million.

2. "A," a manufacturer of airplane engines, agrees to pay \$20 million to "B," a manufacturer of airplane parts, for certain new engine components to be used in the manufacture of airplane engines. The acquisition is exempt under § 802.1(b) as new goods as well as under § 802.1(c)(3) as current supplies.

3. "A," a power generation company, proposes to purchase from "B," a coal company, \$25 million of coal under a long-term contract for use in its facilities to supply electric power to a regional public utility and steam to several industrial sites. This transaction is exempt under § 802.1(c)(2) as an acquisition of current supplies. However, if "A" proposed to purchase coal reserves rather than enter into a contract to acquire output of a coal mine, the acquisition would not be exempt as an acquisition of goods in the ordinary course of business. The acquisition may still be exempt pursuant to § 802.3(b) as an acquisition of reserves of coal if the requirements of that section are met.

4. "A," a national producer of canned fruit, preserves, jams and jellies, agrees to purchase from "B" for \$25 million a total of 10,000 acres of orchards and vineyards in several locations throughout the U.S. "A" plans to harvest the fruit from the acreage for use in its canning operations. The acquisition is not exempt under § 802.1 because orchards and vineyards are real property, not "goods." If, on the other hand, "A" had contracted to acquire from "B" the fruit and grapes harvested from the orchards and vineyards, the acquisition would qualify for the exemption as an acquisition of current supplies under § 802.1(c)(3). Although the transfer of orchards and vineyards is not exempt under § 802.1, the acquisition would be exempt under § 802.2(g) as an acquisition of agricultural property.

5. "A," a railcar leasing company, will purchase \$20 million of new railcars from a railcar manufacturer in order to expand its existing fleet of cars available for lease. The transaction is exempt under § 802.1(b) as an acquisition of new goods and § 802.1(c), as an acquisition of current supplies. If "A" subsequently sells the railcars to "C," a commercial railroad company, that acquisition would be exempt under § 802.1(d)(2), provided that "A" acquired and

held the railcars solely for resale or leasing to an entity not within itself.

6. "A," a major oil company, proposes to sell two of its used oil tankers for \$15.5 million to "B," a dealer who purchases oil tankers from the major U.S. oil companies. "B's" acquisition of the used oil tankers is exempt under § 802.1(d)(1) provided that "B" is actually acquiring beneficial ownership of the used tankers and is not acting as an agent of the seller or purchaser.

7. "A," a cruise ship operator, plans to sell for \$18 million one of its cruise ships to "B," another cruise ship operator. "A" has, in good faith, executed a contract to acquire a new cruise ship with substantially the same capacity from a ship builder. The contract specifies that "A" will receive the new cruise ship within one month after the scheduled date of the sale of its used cruise ship to "B." Since "B" is acquiring a used durable good that "A" has contracted to replace within six months of the sale, the acquisition is exempt under § 802.1(d)(3).

8. "A," a luxury cruise ship operator, proposes to sell to "B," a credit company engaged in the ordinary course of its business in lease financing transactions, its fleet of six passenger ships under a 10-year sale/leaseback arrangement. That acquisition is exempt pursuant to § 802.1(d)(1), used durable goods acquired for leasing purposes. The acquisition is also exempt under § 802.63(a) as a bona fide credit transaction entered into in the ordinary course of "B's" business. "B" now proposes to sell the ships, subject to the current lease financing arrangement, to "C," another lease financing company. This transaction is exempt under § 802.1(d)(1) and § 802.1(d)(2).

9. Three months ago "A," a manufacturing company, acquired several new machines that will replace equipment on one of its production lines. "A's" capacity to produce the same products increased modestly when the integration of the new equipment was completed. "B," a manufacturing company that produces products similar to those produced by "A," has entered into a contract to acquire for \$18 million the machinery that "A" replaced. Delivery of the equipment by "A" to "B" is scheduled to occur within thirty days. Since "A" purchased new machinery to replace the productive capacity of the used equipment, which it sold within six months of the purchase of the new equipment, the acquisition by "B" is exempt under § 802.1(d)(3).

10. "A" will sell to "B" for \$16 million all of the equipment "A" uses exclusively to perform its billing requirements. "B" will use the equipment to provide "A's" billing needs pursuant to a contract which "A" and "B" executed 30 days ago in conjunction with the equipment purchase agreement. Although the assets "B" will acquire make up essentially all of the assets of one of "A's" management and administrative support services divisions, the acquisition qualifies for the exemption under § 802.1(d)(4) because a company's internal management and administrative support services, however organized, are not an operating unit as defined by § 802.1(a). Management and administrative support services are not a "business undertaking" as that term is used

in § 802.1(a). Rather, they provide support and benefit to the company's operating units and support the company's business operations. However, if the assets being sold also derived revenues from providing billing services for third parties, then the transfer of these assets would not be exempt under § 802.1(d)(4), since the equipment is not being used solely to provide management and administrative support services to "A".

11. "A," a manufacturer of pharmaceutical products, and "B" have entered into a contract under which "B" will provide all of "A's" research and development needs. Pursuant to the contract, "B" will also purchase all of the equipment that "A" formerly used to perform its own research and development activities. The sale of the equipment is not an exempt transaction under § 802.1(d)(3) because "A" is not replacing the productive capacity of the equipment being sold. The sale is also not exempt under § 802.1(d)(4), because functions such as research and development and testing are not management and administrative support services of a company but are integral to the design, development or production of the company's products.

12. "A," an automobile manufacturer, is discontinuing its manufacture of metal seat frames for its cars. "A" enters into a contract with "B," a manufacturer of various fabricated metal products, to sell its seat frame production lines and to purchase from "B" all of its metal seat frame needs for the next five years. This transfer of productive capacity by "A" is not exempt pursuant to § 802.1(d)(3), since "A" is not replacing the productive capacity of the equipment being sold. The acquisition is also not exempt under § 802.1(d)(4). "A's" sale of production lines is not the transfer of goods that provide management and administrative services to support the business operations of "A"; this manufacturing equipment is an integral part of "A's" production operations.

3. Part 802 is amended by adding Sections 802.2, 802.3, 802.4 and 802.5 to read as follows:

§ 802.2 Certain acquisitions of real property assets.

(a) *New facilities.* An acquisition of a new facility shall be exempt from the requirements of the act. A new facility is a structure that has not produced income and was either constructed by the acquired person for sale or held at all times by the acquired person solely for resale. The new facility may include realty, equipment or other assets incidental to the ownership of the new facility. In an acquisition that includes a new facility, the transfer of any other assets shall be subject to the requirements of the act and these rules as if they were being acquired in a separate acquisition.

(b) *Used facilities.* An acquisition of a used facility shall be exempt from the requirements of the act if the facility is acquired from a lessor that has held title to the facility for financing purposes in

the ordinary course of the lessor's business by a lessee that has had sole and continuous possession and use of the facility since it was first built as a new facility. The used facility may include realty, equipment or other assets associated with the operation of the facility. In an acquisition that includes a used facility that meets the requirements of this paragraph, the transfer of any other assets shall be subject to the requirements of the act and these rules as if they were acquired in a separate transaction.

(c) *Unproductive real property.* An acquisition of unproductive real property shall be exempt from the requirements of the act. In an acquisition that includes unproductive real property, the transfer of any assets that are not unproductive real property shall be subject to the requirements of the act and these rules as if they were being acquired in a separate acquisition.

(1) Subject to the limitations of (c)(2), unproductive real property is any real property, including raw land, structures or other improvements (but excluding equipment), associated production and exploration assets as defined in § 802.3(c), natural resources and assets incidental to the ownership of the real property, that has not generated total revenues in excess of \$5 million during the thirty-six (36) months preceding the acquisition.

(2) Unproductive real property does not include the following:

- (i) Manufacturing or non-manufacturing facilities that have not yet begun operation;
- (ii) Manufacturing or non-manufacturing facilities that were in operation at any time during the twelve (12) months preceding the acquisition; and
- (iii) Real property that is either adjacent to or used in conjunction with real property that is not unproductive real property and is included in the acquisition.

(d) *Office and residential property.*

(1) An acquisition of office or residential property shall be exempt from the requirements of the act. In an acquisition that includes office or residential property, the transfer of any assets that are not office or residential property shall be subject to the requirements of the act and these rules as if such assets were being transferred in a separate acquisition.

(2) Office and residential property is real property that is used primarily for office or residential purposes. In determining whether real property is used primarily for office or residential purposes, all real property, the acquisition of which is exempt under

another provision of the act and these rules, shall be excluded from the determination. Office and residential property includes:

- (i) Office buildings.
- (ii) Residences.
- (iii) Common areas on the property, including parking and recreational facilities, and
- (iv) Assets incidental to the ownership of such property, including cash, prepaid taxes or insurance, rental receivables and the like.

(3) If the acquisition includes the purchase of a business conducted on the office and residential property, the transfer of that business, including the space in which the business is conducted, shall be subject to the requirements of the act and these rules as if such business were being transferred in a separate acquisition.

(e) *Hotels and motels.*

(1) An acquisition of a hotel or motel, its improvements such as golf, swimming, tennis, restaurant, health club or parking facilities (but excluding ski facilities), and assets incidental to the ownership and operation of the hotel or motel (e.g., prepaid taxes or insurance, management contracts and licenses to use trademarks associated with the hotel or motel being acquired) shall be exempt from the requirements of the act. In an acquisition that includes a hotel or motel, the transfer of any assets that are not a hotel or motel, its improvements such as golf, swimming, tennis, restaurant, health club or parking facilities (but excluding ski facilities) and assets incidental to the ownership of the hotel or motel, shall be subject to the requirements of the act and these rules as if they were being acquired in a separate acquisition.

(2) Notwithstanding paragraph (1) of the section, an acquisition of a hotel or motel that includes a gambling casino shall be subject to the requirements of the act and these rules.

(f) *Recreational land.* An acquisition of recreational land shall be exempt from the requirements of the act.

Recreational land is real property used primarily as a golf course or a swimming or tennis club facility, and assets incidental to the ownership of such property. In an acquisition that includes recreational land, the transfer of any property or assets that are not recreational land shall be subject to the requirements of the act and these rules as if they were being acquired in a separate acquisition.

(g) *Agricultural property.* An acquisition of agricultural property, assets incidental to the ownership of such property and associated agricultural assets shall be exempt from

the requirements of the act. Agricultural property is real property and assets that primarily generate revenues from the production of crops, fruits, vegetables, livestock, poultry, milk and eggs (activities within SIC Major Groups 01 and 02).

(1) Associated agricultural assets are assets integral to the agricultural business activities conducted on the property. Associated agricultural assets include, but are not limited to, inventory (e.g., livestock, poultry, crops, fruit, vegetables, milk, eggs); structures that house livestock raised on the real property; and fertilizer and animal feed. Associated agricultural assets do not include processing facilities such as poultry and livestock slaughtering, processing and packing facilities.

(2) Agricultural property does not include any real property and assets either adjacent to or used in conjunction with processing facilities that are included in the acquisition.

(3) In an acquisition that includes agricultural property, the transfer of any assets that are not agricultural property, assets incidental to the ownership of such property or associated agricultural assets shall be subject to the requirements of the act and these rules as if such assets were being transferred in a separate acquisition.

(b) *Retail rental space; warehouses.* An acquisition of retail rental space (including shopping centers) or warehouses and assets incidental to the ownership of retail rental space or warehouses shall be exempt from the requirements of the act, except when the retail rental space or warehouse is to be acquired in an acquisition of a business conducted on the real property. In an acquisition that includes retail rental space or warehouses, the transfer of any assets that are neither retail rental space nor warehouses shall be subject to the requirements of the act and these rules as if such assets were being transferred in a separate acquisition.

Examples. 1. "A," a major automobile manufacturer, builds a new automobile plant in anticipation of increased demand for its cars. The market does not improve and "A" never occupies the facility. "A" then sells the facility, which is fully equipped and ready for operation, to "B," another automobile manufacturer. The acquisition of this plant, including any equipment and assets associated with its operation, is not exempt as an acquisition of a new facility, even though the facility has not produced any income, since "A" did not construct the facility for sale or hold it at all times solely for resale. Also, the acquisition is not exempt as an acquisition of unproductive property, because manufacturing facilities that have not yet begun operations are explicitly excluded from that exemption.

2. B, a subsidiary of "A," a financial institution, acquired a newly constructed power plant, which it leased to "X" pursuant to a lease financing arrangement. "A's" acquisition of the plant through B was exempt under § 802.63(a) as a bona fide credit transaction entered into in the ordinary course of "A's" business. "X" operated the plant as sole lessee for the next eight years and now proposes to exercise an option to buy the plant for \$62 million. "X's" acquisition of the plant is exempt pursuant to § 802.2(b). The plant is being acquired from B, the lessor, which held title to the plant for financing purposes, and the purchaser, "X," has had sole and continuous possession and use of the plant since its construction.

3. "A" proposes to acquire a \$100 million tract of wilderness land from "B." Copper deposits valued at \$17 million and timber reserves valued at \$20 million are situated on the land and will be conveyed as part of this transaction. During the last three fiscal years preceding the sale, the property generated \$50,000 from the sale of a small amount of timber cut from the reserves two years ago. "A's" acquisition of the wilderness land from "B" is exempt as an acquisition of unproductive real property because the property did not generate revenues exceeding \$5 million during the thirty-six months preceding the acquisition. The copper deposits and timber reserves are by definition unproductive real property and, thus, are not separately subject to the notification requirements.

4. "A" proposes to purchase from "B" for \$40 million an old steel mill that is not currently operating to add to "A's" existing steel production capacity. The mill has not generated revenues during the 36 months preceding the acquisition but contains equipment valued at \$16 million that "A" plans to refurbish for use in its operations. "A's" acquisition of the mill and the land on which it is located is exempt as unproductive real property. However, the transfer of the equipment and any assets other than the unproductive property is not exempt and is separately subject to the notification requirements of the act.

5. "A" proposes to purchase two downtown lots, Parcels 1 and 2, from "B" for \$40 million. Parcel 1, located in the southwest section, contains no structures or improvements. A hotel is located in the northeast section on Parcel 2, and it has generated \$9 million in revenues during the past three years. The purchase of Parcel 1 is exempt if it qualifies as unproductive real property, i.e., it has not generated annual revenues in excess of \$5 million in the three fiscal years prior to the acquisition. Parcel 2 is not unproductive real property, but its acquisition is exempt under § 802.2(e) as the acquisition of a hotel.

6. "A" plans to purchase from "B," a manufacturer, a newly-constructed building that "B" had intended to equip for use in its manufacturing operations. "B" was unable to secure financing to purchase the necessary equipment and "A," also a manufacturer, will be required to invest approximately \$50 million in order to equip the building for use in its production operations. This building is

not a new facility under § 802.2 (a), because it was not constructed or held by "B" for sale or resale. However, the acquisition of the building qualifies for exemption as unproductive real property pursuant to § 802.2(c)(1). The building is not yet a manufacturing facility since it does not contain equipment and requires significant capital investment before it can be used as a manufacturing facility.

7. "A" proposes to purchase from "B," for \$20 million, a 100 acre parcel of land that includes a currently operating factory occupying 10 acres. The other 90 adjoining acres are vacant and unimproved and are used by "B" for storage of supplies and equipment. The factory and the unimproved acreage have fair market values of \$12 million and \$8 million, respectively. The transaction is not exempt under § 802.2(c) because the vacant property is adjacent to property occupied by the operating factory. Moreover, if the 90 acres were not adjacent to the 10 acres occupied by the factory, the transaction would not be exempt because the 90 acres are being used in conjunction with the factory being acquired and thus is not unproductive property.

8. "X" proposes to buy a five-story building from "Y." The ground floor of this building houses a department store, and "X" currently leases the third floor to operate a medical laboratory. The remaining three floors are used for offices. "X" is not acquiring the business of the department store. Because the ground floor is rental retail space, the acquisition of which is exempt under § 802.2(h), this part of the building is excluded from the determination of whether the building is used primarily for office purposes. The laboratory is therefore the only non-office use, and, since it makes up 25 percent of the remainder of the building, the building is used 75 percent for offices. Thus the building qualifies as an office building and its acquisition is therefore exempt under § 802.2(d).

9. "A" intends to acquire three shopping centers from "B" for a total of \$80 million. The anchor stores in two of the shopping centers are department stores, the businesses of which "A" is buying from "B" as part of the overall transaction. The acquisition of the shopping centers is an acquisition of retail rental space that is exempt under § 802.2(h). However, "A's" acquisition of the department store business, including the portion of the shopping centers that the two department stores being purchased occupy, are separately subject to the notification requirements. If the value of these assets exceeds \$15 million, "A" must comply with the requirements of the act for this part of the transaction.

10. "A" wishes to purchase from "B" a parcel of land for \$30 million. The parcel contains a race track and a golf course. The golf course qualifies as recreational land pursuant to § 802.2(f), but the race track is not included in the exemption. Therefore, if the value of the race track is more than \$15 million, "A" will have to file notification for the purchase of the race track.

11. "A" intends to purchase a poultry farm from "B." The acquisition of the poultry farm is a transfer of agricultural property that is

exempt pursuant to § 802.2(g). If, however, "B" has a poultry slaughtering and processing facility on his farm that is included in the acquisition, "A's" acquisition of the farm is not exempt as an acquisition of agricultural property because agricultural property does not include property or assets adjacent to or used in conjunction with a processing facility that is included in an acquisition.

12. "A" proposes to purchase the prescription drug wholesale distribution business of "B" for \$50 million. The business includes six regional warehouses used for "B's" national wholesale drug distribution business. Since "A" is acquiring the warehouses in connection with the acquisition of "B's" prescription drug wholesale distribution business, the acquisition of the warehouses is not exempt.

§ 802.3 Acquisitions of carbon-based mineral reserves.

(a) An acquisition of reserves of oil, natural gas, shale or tar sands, or rights to reserves of oil, natural gas, shale or tar sands together with associated exploration or production assets shall be exempt from the requirements of the act if the value of the reserves, the rights and the associated exploration or production assets to be held as a result of the acquisition does not exceed \$500 million. In an acquisition that includes reserves of oil, natural gas, shale or tar sands, or rights to reserves of oil, natural gas, shale or tar sands and associated exploration or production assets, the transfer of any other assets shall be subject to the requirements of the act and these rules as if they were being acquired in a separate acquisition.

(b) An acquisition of reserves of coal, or rights to reserves of coal and associated exploration or production assets, shall be exempt from the requirements of the act if the value of the reserves, the rights and the associated exploration or production assets to be held as a result of the acquisition does not exceed \$200 million. In an acquisition that includes reserves of coal, rights to reserves of coal and associated exploration or production assets, the transfer of any other assets shall be subject to the requirements of the act and these rules as if they were being acquired in a separate acquisition.

(c) Associated exploration or production assets means equipment, machinery, fixtures and other assets that are integral and exclusive to current or future exploration or production activities associated with the carbon-based mineral reserves that are being acquired. Associated exploration or production assets do not include the following:

(1) Any pipeline and pipeline system or processing facility which transports

or processes oil and gas after it passes through the meters of a producing field located within reserves that are being acquired; and

(2) Any pipeline or pipeline system that receives gas directly from gas wells for transportation to a natural gas processing facility or other destination.

Examples: 1. "A" proposes to purchase from "B" for \$550 million gas reserves that are not yet in production and have not generated any income. "A" will also acquire from "B" for \$280 million producing oil reserves and associated assets such as wells, compressors, pumps and other equipment. The acquisition of the gas reserves is exempt as a transfer of unproductive property under § 802.2(c). The acquisition of the oil reserves and associated assets is exempt pursuant to § 802.3(a), since the value of the reserves and associated assets does not exceed the \$500 million limitation.

2. "A," an oil company, proposes to acquire for \$180 million oil reserves currently in production along with field pipelines and treating and metering facilities which serve such reserves exclusively. The acquisition of the reserves and the associated assets are exempt. "A" will also acquire from "B" for \$16 million a natural gas processing plant and its associated gathering pipeline system. This acquisition is not exempt since § 802.3(c) excludes these assets from the exemption in § 802.3 for transfers of associated exploration or production assets.

3. "A," an oil company, proposes to acquire a coal mine currently in operation and associated production assets for \$90 million from "B," an oil company. "A" will also purchase from "B" producing oil reserves valued at \$100 million and an oil refinery valued at \$13 million. The acquisition of the coal mine and the oil reserves is exempt pursuant to § 802.3. Although § 802.3(c) excludes the refinery from the exemption in § 802.3 for transfers of associated exploration and production assets, "A's" acquisition of the refinery is not subject to the notification requirements of the act because its value does not exceed \$15 million.

4. "X" proposes to acquire from "Z" coal reserves which, together with associated exploration assets, are valued at \$230 million. Since the value of the reserves and the assets exceeds the \$200 million limitation in § 802.3(b), this transaction is not exempt under § 802.3. However, if the coal reserves qualify as unproductive property under the requirements of § 802.2(c), their acquisition, along with the acquisition of their associated assets, would be exempt.

§ Section 802.4 Acquisitions of voting securities of issuers holding certain assets the direct acquisition of which is exempt.

(a) An acquisition of voting securities of an issuer whose assets together with those of all entities it controls consist or will consist of assets whose purchase would be exempt from the requirements of the act pursuant to section 7A(c)(2) of the act, § 802.2, § 802.3 or § 802.5 of these rules is exempt from the reporting

requirements if the acquired issuer and all entities it controls do not hold other non-exempt assets with an aggregate fair market value of more than \$15 million.

(b) As used in paragraph (a) of this section, "issuer" means a single issuer, or two or more issuers controlled by the same acquired person.

(c) In connection with paragraph (a) of this section and § 801.15 (b), the value of the assets of an issuer whose voting securities are being acquired pursuant to this section shall be the fair market value, determined in accordance with § 801.10(c).

Examples: 1. "A," a real estate investment company, proposes to purchase 100 percent of the voting securities of C, a wholly-owned subsidiary of "B," a construction company. C's assets are a newly constructed, never occupied hotel, including fixtures, furnishings and insurance policies. The acquisition of the hotel would be exempt under § 802.2(a) as a new facility and under § 802.2(d). Therefore, the acquisition of the voting securities of C is exempt pursuant to § 802.4(a) since C holds assets whose direct purchase would be exempt under § 802.2 and does not hold non-exempt assets exceeding \$15 million in value.

2. "A" proposes to acquire 60 percent of the voting securities of C from "B." C's assets consist of a portfolio of mortgages valued at \$20 million and a small manufacturing plant valued at \$6 million. The manufacturing plant is an operating unit for purposes of § 802.1(a). Since the acquisition of the mortgages would be exempt pursuant to section 7A(c)(2) of the act and since the value of the non-exempt manufacturing plant is less than \$15 million, this acquisition is exempt under § 802.4(a).

3. "A" proposes to acquire from "B" 100 percent of the voting securities of each of three issuers, M, N and O, simultaneously. M's assets consist of oil reserves worth \$160 million and coal reserves worth \$40 million. N has assets consisting of \$130 million of gas reserves and \$100 million of coal reserves. O's assets are oil shale reserves worth \$140 million and a coal mine worth \$80 million. Since "A" is simultaneously acquiring the voting securities of three issuers from the same acquired person, it must aggregate the assets of the issuers to determine if any of the limitations in § 802.3 is exceeded. As a result of aggregating the assets of M, N and O, "A's" holdings of oil and gas reserves are below the \$500 million limitation for such assets in § 802.3(a). However, the aggregated holdings exceed the \$200 million limitation for coal reserves in § 802.3(b). "A's" acquisition therefore is not exempt, and it must report the entire transaction.

§ 802.5 Acquisitions of investment rental property assets.

(a) Acquisitions of investment rental property assets shall be exempt from the requirements of the act.

(b) Investment rental property assets. "Investment rental property assets" means real property that will not be

rented to entities included within the acquiring person except for the sole purpose of maintaining, managing or supervising the operation of the real property, and will be held solely for rental or investment purposes. In an acquisition that includes investment rental property assets, the transfer of any property or assets that are not investment rental property assets shall be subject to the requirements of the act and these rules as if they were being acquired in a separate transaction. Investment rental property assets include:

- (1) Property currently rented,
- (2) Property held for rent but not currently rented,
- (3) Common areas on the property, and
- (4) Assets incidental to the ownership of property, which may include cash, prepaid taxes or insurance, rental receivables and the like.

Example: 1. "X", a corporation, proposes to purchase a sports/entertainment complex which it will rent to professional sports teams and promoters of special events for concerts, ice shows, sporting events and other entertainment activities. "X" will provide office space in the complex for "Y", a management company which will maintain and manage the facility for "X". This acquisition is an exempt acquisition of investment rental property assets since "X" intends to rent the facility to third parties and is providing space within the facility to a management company solely to maintain, manage or supervise the operation of the facility on its behalf. If, however, "X" controls Z, a concert promoter to whom it also intends to rent the complex, the acquisition would not be exempt under § 802.5, since the property would not meet the requirements of § 802.5(b)(1).

2. "X" intends to buy from "Y" a development commonly referred to as an industrial park. The industrial park contains a warehouse/distribution center, a retail tire and automobile parts store, an office building, and a small factory. The industrial park also contains several parcels of vacant land. If "X" intends to acquire this industrial park as investment rental property, the acquisition will be exempt pursuant to § 802.5. If, however, "X" intends to use the factory for its own manufacturing operations, this exemption would be unavailable. The exemptions in § 802.2 for warehouses, rental retail space, office buildings, and undeveloped land may still apply and, if the value of the factory is \$15 million or less, the entire transaction may be exempted by that section.

By direction of the Commission,
Donald S. Clark,
Secretary.
[FR Doc. 96-7529 Filed 3-27-96; 8:45 am]
BILLING CODE 6780-01-P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34-37022; File No. S7-40-02]

RIN 3236-AF91

Rules of Practice

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; Correction.

SUMMARY: This document contains a correction to the final regulations which were published on June 23, 1995 (60 FR 32738). These regulations relate to the Commission's procedural rules that govern administrative proceedings.

EFFECTIVE DATE: July 24, 1995.

FOR FURTHER INFORMATION CONTACT: Frances R. Sienkiewicz, Office of the Secretary, 202-942-7072.

SUPPLEMENTARY INFORMATION: The Rules of Practice that are the subject of this correction are the procedural rules that govern administrative proceedings.

Correction of Publication

Accordingly, the publication on June 23, 1995 of the Rules of Practice, which were the subject of FR Doc. No. 95-14750, is corrected as follows:

1. On page 32794, in column one, amendment 7 is revised to read:

§ 200.30-7 [Corrected]

7. In § 200.30-7, in paragraph (a)(3), remove the words "Rule 13 of the Commission's rules of practice, § 201.13" and in their place, add the words "Rule 161 of the Commission's Rules of Practice, § 21.161", and in paragraph (a)(4), remove the words "§ 201.13" and in their place, add the words "Rule 161 of the Commission's Rules of Practice, § 201.161".

Dated: March 25, 1996.

Jonathan G. Katz,
Secretary.

[FR Doc. 96-7537 Filed 3-27-96; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[DEA No. 148-f]

Exempt Chemical Preparations

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Interim Rule and Request for Comments.

SUMMARY: This interim rule amends the list of exempt chemical preparations set forth in section 1308.24(i) of Title 21 of the Code of Federal Regulations. This action is in response to DEA's periodic review of the exempt chemical preparation list and of new applications for exemptions which have been approved by DEA. This action is being done by interim rule because prior notice is unnecessary. The list contains preparations which have already been exempted from the application of specific provisions of the Comprehensive Drug Abuse Prevention and Control Act of 1970, and from certain Drug Enforcement Administration Regulations.

EFFECTIVE DATE: March 28, 1996.

Comments must be submitted on or before May 28, 1996.

ADDRESSES: Comments and objections should be submitted to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537; Attention: Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307-7183.

SUPPLEMENTARY INFORMATION: The Controlled Substances Act as amended by the Dangerous Drug Diversion Control Act of 1984 authorizes the Attorney General in accordance with 21 U.S.C. 811 (g)(3)(B) to exempt from specific provisions of the Act, a compound, mixture, or preparation which contains any controlled substance, which is not for administration to a human being or animal and which is packaged in such form or concentration, or with adulterants or denaturants, so that, as packaged, it does not present any significant potential for abuse. This authority has been delegated to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, 28 CFR 0.104.

The Deputy Assistant Administrator has received applications pursuant to section 1308.23 of Title 21 of the Code of Federal Regulations requesting approval of exempt status provided for in 21 CFR 1308.24. The Deputy Assistant Administrator has found that each of the following preparations and mixtures is intended for laboratory, industrial, educational, or special research purposes, is not intended for general administration to man or animal, and either (a) contains no narcotic controlled substances and is